provide the appropriate level of protection along the border while preserving a maximum level of service within the licensed service area. PageNet has suggested such a formula in its comments in the *Part 22 Rewrite* proceeding. [27/] Either approach is consistent with computerization of technical applications and routine processing of applications without the requirement for detailed contour verification or engineering analysis. A formula based approach would assure maximum flexibility for licensees in building their systems and serving market demands in border areas, while protecting adjacent co-channel systems. Therefore, PageNet recommends adoption of this approach over one to expand the number of station classes.

Thus, while the 70-mile co-channel separation requirements currently contained in both Part 90 and Part 22 are facially comparable, PageNet believes the Commission should, as part of implementing market area licensing, establish more flexible station classifications or formula-based station parameters. This approach would enable licensees to provide the maximum level of service to the public throughout their service areas while assuring reliable protection from interference to adjacent co-channel systems.

5. Emission Masks (¶¶ 42-44)

The rules governing emission masks in Parts 22 and 90 are already the same, i.e., 25 kHz channel spacing requirements

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27/ The formula offered by PageNet in those comments assumes a 20-mile service contour. Alternative tables could easily be computed that would produce service areas of lesser size.

governed by the same emission limitations, [28/] bandwidth limitations, [29/] and transmitter frequency tolerances. [30/] PageNet advocates that these provisions should be broadened to allow licensees to stack frequencies and utilize the spectrum between the bands, so long as protection at the band edges is maintained to protect adjacent band users. This would allow aggregation of such frequencies and the provision of broader bandwidth services, thus allowing licensees the flexibility to offer a diverse array of new services over existing frequencies. [31/]

6. Antenna Height and Power (¶¶ 45-53)

The existing Part 22 and Part 90 rules respecting height and power are not fully consistent. Generally, 931 MHz paging licensees may operate at a maximum 1000 watts ERP at 1000 feet, but are allowed up to 3500 watts on the three designated nationwide channels, at "internal" sites, and anywhere HAAT does not exceed 580 feet. [32/] Under Part 90, however, only nationwide licensees at 929-930 MHz may operate at 3500 watts. Regional and

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28/ See, §§ 90.211(d)(1)(ii), 90.209(c)(1), 90.209(g), 22.508(g), 22.106(a) and 22.106(b)(2) of the Rules.

29/ § 90.209(b) and § 22.507.

30/ §§ 90.213 and 22.101 of the Rules.

31/ In the event of an assignment or transfer of one or more, but not all, of the stacked frequencies, the emission mask and guard band requirements applicable to the channels in question would be effective again.

32/ See, §§ 22.505(c)(2) and 22.506(f)(2) of the Rules.

local systems are restricted to 1000 watts ERP. [33/] In the *Further Notice*, the Commission questions whether Part 90 should be modified to permit non-nationwide licensees to operate at a maximum ERP of 3500 watts.

PageNet supports allowing all paging base station facilities above 900 MHz to operate at a maximum power of 3500 watts ERP. As PageNet pointed out in its *Part 22 Rewrite* comments, paging service providers operating on non-nationwide channels in the 900 MHz band are at a distinct competitive disadvantage to those licensed on the nationwide channels, despite the fact that both types of carriers compete head-to-head for local, regional and nationwide customers. [34/] While they vie for the same subscribers, the playing field on which they compete is decidedly uneven, to the distinct disadvantage of those operating on the non-nationwide frequencies at both 929 and 931 MHz.

The Commission has acknowledged in licensing 931 MHz nationwide frequencies and 929 MHz nationwide systems that only co-channel interference is of concern, and in both instances has authorized a maximum of 3500 watts. Such power levels enhance the carrier's ability to construct facilities that provide service over the widest possible area utilizing the fewest number of

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33/ Narrowband PCS licensees are permitted to operate at up to 3500 watts, but must reduce power levels in accordance with a prescribed formula at the borders of their service areas. See § 99.132(e) of the Rules.

34/ Licensees on the 931-932 MHz nationwide channels are not prohibited from using their nationwide frequencies to provide local service, and as explained, supra, at pp. 14-16, it makes economic sense to use a common infrastructure to provide these services.

individual transmission facilities, thereby reducing the cost of system construction and ultimately the cost of service to subscribers.

In their Petitions for Reconsideration and Clarification of the PCP Exclusivity Order, both PageNet and NABER have argued for extending the higher power limits to non-nationwide systems. This recognizes the wide-area nature of such systems and that co-channel protection can be provided without unnecessarily limiting the power of stations internal to the system. Experience at 931 MHz with the use of 3500 watts at heights of up to 580 feet has proven that it is a benefit in terms of reducing infrastructure costs (with fewer towers), lowering rates, and providing better service (greater building penetration), and it causes no objectionable interference to co-channel operations. The Commission should, therefore, apply a consistent approach to all 900 MHz paging systems, permitting operation at 3500 watts at heights up to 580 feet and at any site that is "internal" to a wide area local, regional or nationwide system, as well as at any station operating on the 931 MHz nationwide channels or as part of a 929 MHz nationwide system.

7. Modulation and Emission Requirements (¶¶ 54-55)

PageNet supports the Commission's proposal to eliminate emission restrictions and believes that such elimination would afford licensees warranted system design flexibility.

8. Interoperability (¶¶ 56-57)

Although cellular licensees are subject to interoperability rules requiring all cellular telephones to be capable of operating on all cellular channels and capable of interacting with all cellular radio service providers' base stations, no such requirements apply to non-cellular Part 22 licensees or private radio services. The Commission requests comment on whether any Part 90 CMRS licensees should be subject to mandatory interoperability requirements similar to cellular licensees. 35/

PageNet sees no basis for imposing any interoperability restrictions on private carrier or common carrier paging services. In effect, interoperability among paging systems has occurred de facto in the paging industry. The advent of wide area state wide, MTA, regional and nationwide paging systems has superceded the need for interoperability requirements. Furthermore, the cost and size of pagers would be increased substantially if interoperability were mandated.

There is, moreover, no need to require all pagers to operate on all paging frequencies, similar to the cellular requirement that cellular phones operate on both A and B frequencies. The fact that pagers are frequency-specific does not impede competition in paging services, nor is a customer forever locked into a particular frequency if it once has purchased a pager. In the first instance, most subscribers lease pagers so they can move to another carrier without concern about stranded investment

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35/ *Further Notice* at ¶¶ 56-57.

associated with terminal equipment. Those customers who do own their own pagers can easily have them recrystallized to another frequency at a nominal cost and, in fact, many carriers offer to recrystallize a new customer's pager in order to acquire the business. There is simply no justification for imposing this type of requirement on the paging industry.

B. Operational Rules (¶¶ 58-85)

1. Construction Period and Coverage Requirements (¶¶ 59-66)

Both Parts 22 and 90 provide for relatively short construction periods that are tied to the construction of individual stations. Part 22 licensees are subject to a twelve-month construction deadline [36/] and Part 90 licensees are subject to an eight-month deadline. [37/]

The Commission recognizes that many paging operators are constructing wide-area systems with multiple sites and, on that basis, the Commission proposes to either adopt some form of extended implementation procedure to parallel private carrier paging rules for wide-area systems, or to adopt defined service areas with appropriate construction periods based on the size of the area to be served.

Consistent with its support of Commission-defined market service areas, PageNet submits that multi-phase construction

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36/ § 22.43(a)(2) of the Rules.

37/ § 90.495(c) of the Rules. By contrast, narrowband PCS licensees are subject to multi-year construction periods combined with interim coverage benchmarks so that coverage is achieved on a phased basis.

periods are fully justified for large, multi-transmitter systems with a minimum of 30 transmitters and should be adopted for paging systems operating at 931 and 929 MHz. Such construction deadlines would facilitate the development of wide-area systems. PageNet cautions against adopting extended construction schedules for local paging systems. Local systems are not prohibitively expensive nor onerous to build, within a 12-month period, and thus there is no reason to allow those licensees to have extended build out options which could serve unnecessarily to delay provision of service to the public. For local systems then, PageNet advocates a 12-month construction requirement.

The *Further Notice* proposes that licensees should not only complete construction but also begin service by the end of the construction period. **38/** The Commission's proposal to require licensees to meet this requirement by providing service to at least two third parties would, in reality, shorten the one-year construction period because it fails to take into account the need for carriers to market their services to obtain customers, which is done principally after a system is operational. In lieu of that proposal, PageNet recommends that licensees be deemed to have met this requirement if they have constructed their facilities and are interconnected to the public switched telephone network and are available for service.

38/ *Further Notice* at ¶ 63.

2. Loading Requirements (¶¶ 67-73)

The *Further Notice* tentatively proposes to do away with unjustified channel loading requirements. Id. at ¶ 70. PageNet supports the Commission's proposal. Loading restrictions, designed to deter spectrum warehousing, are unnecessary with the advent of competitive bidding where licensees must pay for the spectrum they are licensed to use. Nor are they necessary in the context of market area licensing, where the costs of building out a system create incentives for prompt, efficient use of frequencies in order to generate a return on investment.

3. User Eligibility (¶¶ 74-75)

PageNet supports the Commission's proposal to do away with all user eligibility limitations applicable to CMRS providers under Part 90.

4. Permissible Uses (¶¶ 76-79)

The Commission proposes to eliminate various use-related restrictions, including (1) the prohibitions against Part 90 licensees providing a common carrier service as they apply to, inter alia, Part 90 paging services, [39/] (2) its Part 90 restriction limiting the purposes of communications, [40/] and (3) the Part 90 limit on duration of messages. [41/]

39/ *Further Notice* at ¶ 78. Likewise, in CC Docket No. 94-46, it has proposed elimination of the prohibition on the use of Part 22 transmitters to provide non-common carrier services.

40/ *Further Notice* at ¶ 79.

41/ The Commission proposes to retain its limitations on message duration as it applies to Part 90 licensees operating on shared channels, as it helps assure that all co-channel

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PageNet advocates that the above prohibitions on Part 90 services' permissible use should be eliminated. In addition, PageNet believes that flexibility to use frequency to transmit incidental services on private carrier paging systems, as well as common carrier paging systems, should be explicitly permitted and will provide the opportunity for expanded offerings to the public.

5. Station Identification (¶¶ 80-82)

Part 22 licensees must identify themselves in connection with each communication or every 30 minutes during periods of prolonged transmission. **42/** In lieu of the station call sign, mobile stations can be identified by means of a telephone number, or other designation. **43/** Part 90 licensees must identify with every transmission or at 15 minute intervals during periods of continuous traffic. **44/**

PageNet supports retention of the station identification rules, but suggests revision of both Part 22 and Part 90 to require only that licensees transmit their station identifications once an hour within ± 5 minutes of the hour. This is especially necessary for 900 MHz private carrier paging, as these frequencies remain shared. This requirement would facilitate identification of an interfering signal by giving parties a defined period each

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licensees have the maximum possible access to air time. *Further Notice* at ¶ 79.

42/ § 22.213(a) of the Rules.

43/ § 22.213(b)(1) of the Rules.

44/ § 90.425(a) of the Rules.

hour during which identifications are transmitted but reduce the broader identification requirements imposed on licensees.

Digitally transmitted call signs should be permitted and preferred, but clear specifications must be written as to format and data speed acceptable to the Commission. Different services today would interpret "digitally" a number of different ways and the concept is undefined. Consideration should be given to the time necessary to reconfigure hardware in order to comply with any new station identification requirements.

6. Standby Facilities

Although not addressed in the *Further Notice*, PageNet advocates discontinuance of the Part 22 requirement that licensees separately license standby transmitters for both messaging and control use and the Part 90 practice of not licensing such transmitters at all. So long as standby facilities are to be operated under the exact same parameters as the licensed, primary facility, CMRS providers should be permitted to ensure the reliability of their systems utilizing standby facilities without being required to obtain a separate standby station authorization. The latter requirement imposes totally superfluous costs on licensees.

IV. LICENSING RULES AND PROCEDURES (¶¶ 106-151)

A. Application Forms and Procedures (¶¶ 108-112)

1. Frequency Coordination

Under Part 22, the Commission performs frequency coordination and assigns frequencies to radio common carrier applicants. Part

90 provides for use of an outside entity, i.e., NABER, to coordinate frequency assignments.

Although this issue also is not raised in the *Further Notice*, PageNet suggests that the Commission adopt procedures for outside coordination of 931 MHz applications for initial and modified licenses, comparable to those used for 929 MHz private carrier applications.

Outside coordination would relieve the Commission of a significant burden and expense it now bears in having to process these applications. Based on the history of outside coordination by NABER, such an approach would speed processing times and thereby speed service to the public. **45/**

2. Transfer of Control and Assignment Applications

Despite the fact this issue is not addressed in the *Further Notice*, PageNet urges the Commission to adopt a single form for all CMRS transfer of control and assignment applications in order to promote administrative efficiency, and reduce the burdens now imposed on both the Commission and the industry by the current forms. **46/**

45/ Reflecting the shifting of this responsibility to NABER, Part 22 application fees should be reduced to make them comparable to those fees prescribed for Part 90 applications.

46/ Currently, Part 22 transfers and assignments are filed on Form 490 that includes separate sections for the transferee/assignee and transferor/assignor to complete. Part 90 transfer of control and assignment applications require different forms. Assignments require dual documentation, with Form 1046 filed by the assignor and Form 574 by the assignee (which is the same form used for initial applications and modifications and is not well designed to accommodate assignments). Transfer of control applications are filed on Form 703.

The Commission should eliminate the filing of technical information currently required of assignees under Part 90, see, § 1.924 and FCC Form 574, and the requirement that Part 22 applicants file copies of all authorizations being transferred/ assigned. [47/] See, FCC Form 490, Item 5d. A simple listing of the subject call sign(s) being assigned and/or transferred would be sufficient.

Finally, PageNet suggests that the Commission eliminate the disparity between Parts 22 and 90 applications with regard to qualifying information. Currently, a Form 490 for Part 22 applicants requests information regarding (1) alien ownership; (2) prior license denial or revocations; (3) felony convictions; and (4) monopolization of radio services. A Form 703 for Part 90 applicants seeks virtually no qualifying information from the proposed transferee.

3. Qualifying Information

While PageNet generally supports the thrust of the Commission's proposal regarding licensee qualifications, we note that the proposed Form 600 application form, at questions 29-33 and instructions at Appendix A, p. 3, relating to alien ownership merely track the wording of § 310(b) of the Communications Act and make no mention of partnerships. As a result, applicants will be misled into believing that a negative answer to the stated questions would establish their eligibility. They would be wrong,

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47/ The volume of paper can be enormous as it includes not only each license but all Form 489s for facilities not yet reflected on the license.

of course, since the Commission also has applied alien ownership restrictions to partnerships as numerous cellular applicants learned, to their regret. At a minimum, the Commission should amend the form and instructions to alert partnerships that they must observe the restrictions prescribed in Wilmer & Scheiner, 103 FCC 2d 511 (1985), reconsidered in part, 1 FCC Rcd 12 (1986).

Form 600, as proposed, also sweeps too broadly in requiring information on denial of applications. See, Form 600, question 34. The denial of an application for technical or formal deficiencies is of no relevance to assessment of later applications and the Form 600 instructions indicate that the Commission is concerned about applications denied due to applicant "misconduct." Id. p. 3. The form should be revised to limit question 34 to applications denied due to misconduct attributable to the applicant. **48/**

48/ In addition to the information required by the new form, the rules for particular services may require additional information. For example, § 22.13(a)(1) requires disclosure of the real party in interest. It is, however, very awkwardly drawn and easy to evade. For example, if IBM were to apply for an authorization, this section would require IBM to list not only all of its subsidiaries but also any business in which it, its officers, directors, shareholders, or key managing employees hold an interest. Besides the patent impossibility of obtaining such information from the shareholders of a publicly-held company, why would the Commission want to know about a director's 5% ownership interest in a McDonald's franchise? The Commission previously has interpreted this provision to require disclosure only of interests in other mobile radio service licensees or applicants. Public Notice, 52 RR 2d 1353 (1982). As it is obvious that not every shareholder can be queried even about these radio interests, the Commission should limit its inquiry to 5% or greater shareholders (10% in the case of investment companies; see § 73.3555, n.2(c). In addition, §§ 22.13(a)(2)(i) and (ii) are somewhat

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B. Public Notice and Petition To Deny Procedures (¶¶ 117-118)

All commercial paging services will now be subject to Section 309 of the Communications Act requiring that public notice be given of certain applications and that those applications be subject to petitions to deny. This will slow the processing of Part 90 applications which heretofore have not been subject to either procedure. Because of the few instances of petitions to deny in this service in the past, or in the case of part 90 applications, petitions for reconsideration, there is little reason to expect any great number of petitions in the future. If expeditious processing of applications is not to suffer, however, it will be necessary for the Commission to start the frequency coordination process upon receipt of the application rather than wait for expiration of the public notice period. The same will be true in the processing of major amendments and modification applications which also will be subject to these notice requirements. **49/**

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redundant as (i) already requires disclosure of all businesses 5% or more owned by any stockholder of the applicant, which is the definition of an affiliate in (ii).

Of course, applicants might be able to avoid much of the problem by using a wholly-owned subsidiary as the applicant. Thus, IBM could use IBM-1 to own all of the stock in the applicant, IBM-2, and avoid having to provide any of this type of information about itself as § 22.13 does not require by its terms full disclosure of the interests of ultimate owners.

49/ *Further Notice* at ¶¶ 118, 129.

Petitions to deny can be filed for anticompetitive or abusive reasons. To discourage this the Commission has adopted rules in various services addressing the compensation which may be paid in settling a petition to deny. Sections 22.927 and 22.929 restrict any payment to a petitioner (or to a competing applicant) to that party's "legitimate and prudent expenses." 50/ The purpose of this rule is to discourage harassment filings by those with no real intent to offer service. PageNet believes that this rule, coupled with a first-come, first-served procedure and wide area licensing will discourage frivolous and extortionate filers.

C. Mutually Exclusive ("MX") Applications (¶¶ 119-128)

The Commission now proposes to use filing windows, which facilitate submission of mutually exclusive applications, followed by competitive bidding to choose between mutually exclusive initial applications rather than relying on the first-come, first-served proposal contained in its *Part 22 Rewrite* which would largely avoid instances of mutual exclusivity. *Further Notice* at ¶¶ 53-54. For paging services the Commission proposes to define as an initial application, any application on a new frequency or any new transmitter more than 2 kilometers from a transmitter operating on the same frequency. Id. at ¶ 59. Major amendments to pending applications for initial applications would also be treated as a new filing exposing the applicant to competing applications. Id. at ¶¶ 57-58. Modifications of existing facilities would be handled on a first-come, first-served

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50/ Similar provisions have also been adopted for the broadcast services. See, §§ 73.3525 and 73.3588.

basis, except, possibly, where the modification would "fundamentally alter the nature or scope of the licensee's system." Id.

In its original proposal in its *Part 22 Rewrite*, the Commission indicated its inclination to change Part 22 rules to rely on a first-come, first-served licensing regime. In this *Further Notice*, however, the Commission appears to have abandoned this proposal and now suggests that applications should be subjected to a filing window procedure which invites competing applications with any resulting mutual exclusivity to be resolved by auction. *Further Notice* at ¶¶ 121-129. Such a procedure is fatally flawed in that it will inevitably engender delay and, in all likelihood, litigation which will impair the development and expansion of service and provide no offsetting public benefit.

Except for the last relating to modifications, these proposals would have a serious adverse impact on 931 MHz paging licensees and the public and should not be adopted. The most serious deficiency is that use of the proposed procedures will threaten the expansion and natural growth of service. One of the most common types of modification application is the addition of new transmitter sites to existing systems. Under the Commission's proposal these would now be subjected to competing applications and auctions or other procedures adding substantial delay and expense. 51/ Even for initial applications on new frequencies, the Commission's proposal would increase costs for obtaining

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51/ At a minimum, the Commission should not subject an application for a new site which would primarily serve only areas already served by a licensee to competing applications.

frequencies and create substantial delay with no significant concomitant benefits other than additional revenue from the auction.

PageNet supports the use of auctions where new frequencies are being allocated as in PCS but, as discussed above, PageNet strongly believes that in all other situations a first-come, first-served frequency-specific application procedure should be used, coupled with wide area licensing, in order to minimize delay and reduce both industry and Commission regulatory burdens.

We have discussed above the desirability of licensing 931 MHz frequencies on an MTA basis. The second critical element of an efficient and fair procedure is the use of the first-come, first-served procedure. In its *Part 22 Rewrite*, the Commission proposed to use this technique, which would largely eliminate mutual exclusivity. PageNet believes it would be exceedingly well advised to do so and, indeed, consistent with the statutory mandate, may be required to do so.

Unlike the current rules, which enable entities who are not ready and willing to build systems themselves to file mutually exclusive applications simply to frustrate the business plan of a qualified applicant, the first-come, first-served procedure, coupled with restrictions on refiling, forces all applicants to "come to the table" with certainty about their business plans. The bottom line of this proposal is that consumers will get service more quickly.

Further, as the Commission recognizes, the implementation of first-come, first-served frequency-specific licensing, coupled with restrictions on refiling for the same territory should those licenses expire unconstructed, minimizes the possibility of any paging frequency being assigned to a licensee filing applications merely to delay another carrier's entrance or expansion into a market. Carriers would be reluctant to use those tactics if their use would ultimately preclude them from expansion on those frequencies within that territory. 52/

As noted, the interrelationship of the proposed rules creates incentives on the part of prospective and existing licensees to file only for those systems that they intend to build and operate. Under PageNet's geographic area licensing scheme, this will be especially true. Carriers would not be likely to apply for an MTA unless they intended to build and operate within the geographic territory for which they were licensed, for fear that they would be thereafter precluded from doing so.

Once a carrier has made the significant investment necessary to construct a real system, particularly one the size of an MTA, it will not permit that system to remain idle for long. Much as it makes no sense to build a hotel and not rent any rooms, it makes no sense for a carrier to build a system and not look for a return on its investment. 53/ Given the nature of the

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52/ Should the Commission not believe this incentive sufficient, it could consider monetary penalties for those who do not construct systems proposed.

53/ This is less true of transmitter-by-transmitter licensing

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Commission's rules, providing service to subscribers will be the only means through which carriers can earn this return. 54/

Since the Commission first proposed to use a first-come, first-served frequency-specific procedure in the *Part 22 Rewrite*, Congress has authorized the use of competitive bidding to select among mutually exclusive applicants. As the Commission has acknowledged, however, Congress also directed the Commission to devise means to avoid mutual exclusivity in its licensing procedures. *Further Notice* at ¶ 54. First-come, first-served frequency-specific procedures would almost always accomplish that result as the only mutually exclusive applications would be those filed the same day. In the *Part 22 Rewrite*, the Commission found that this procedure would eliminate the need for other selection methods, would expedite processing and would thwart filings merely intended to impede a competitor. *Part 22 Rewrite* at ¶ 9. It also noted that it would conserve staff efforts and resources by eliminating the need to process mutually exclusive applications. Id. at ¶ 10. Yet in rejecting this procedure in the instant *Further Notice*, the Commission describes it as being useful only to deter frivolous applications. *Further Notice* at ¶ 122.

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because the investment which could lie fallow is so much less.

54/ Applicants or petitioners whose interests lie solely in speculation and warehousing would also be discouraged by the Commission's limitation on settlements to "legitimate and prudent expenses of the petitioner," as proposed in the *Part 22 Rewrite* proceeding.

As discussed above, however, the primary attraction of a first-come, first-served frequency-specific procedure is that it is remarkably easy and efficient, assuring prompt service to the public and, when coupled with MTA licensing, the ability to quickly expand a system. In contrast, use of the filing window and auction procedure greatly increases both the time and the cost of providing service, as well as using substantial Commission resources.

The sole disadvantage ascribed to a first-come, first-served procedure by the Commission is that it "could cause qualified applicants to be excluded from consideration." Id. at ¶ 122. While true, any selection procedure ultimately excludes qualified applicants who do not win the lottery or do not have enough money to prevail at an auction or who cannot file within the thirty day window for competing applications. The overriding concern, we submit, should not be which qualified paging operator is providing service but whether the Commission's procedures are facilitating provision of that service in the most efficient and expeditious manner. To pose that question is to choose the first-come, first-served procedure.

The Commission also proposes to subject major amendments to pending applications to mutually exclusive treatment. Id. at ¶ 131. Under a first-come, first-served regime, the problem of mutual exclusivity would not arise because an amendment in conflict with a previously filed application would not be

accepted. PageNet submits that minor changes within the licensee's authorized service area should be made using a self certification procedure rather than submitting an application. This, too, will expedite service to the public and relieve the staff and the industry of unnecessary processing. In those circumstances, licensees could notify the Commission of all such changes with their renewal applications.

D. Amendment of Applications and License Modification (¶¶ 129-134)

The Commission has proposed to apply the Part 22 definitions of major and minor amendments and modifications to all CMRS applications. *Further Notice* at ¶ 131. While the distinction between major and minor would be of lesser importance under a first-come, first-served scenario, which would largely eliminate mutually exclusivity, these definitions can be of crucial importance under the Commission's proposed scheme because major amendments will be put on public notice and be subject to petitions to deny and the filing of competing applications while minor amendments and modifications will be exempt. The criteria set forth in § 22.23(c) for classifying major amendments are far too broad and should be revisited. An expansive definition of major amendment or major modification will pose the threat of substantial new delay and expense in developing systems.

Of particular concern is § 22.23(c)(2) which would classify as a major change any extension of the station service area by

more than one mile in any direction. Paging stations typically have service areas with a radius of 20 or more miles so a change of 5% is hardly major. In the broadcast services, the comparable provision classifies as major an amendment which would result in a 50% change in the proposed service area. Similarly, PageNet believes that the proposal to treat as an initial application any modification which would locate a transmitter more than two kilometers from an existing transmitter on that frequency is nonsensical. Interpreted literally, this provision would require the addition of sites wholly within the licensee's existing service area, to be put on public notice. There is no rational purpose to be served by such a requirement.

The Commission should also consider whether changes in ownership and control should require exposure to new petitions to deny or to competing applications. In broadcast services where the characteristics of the owner are more important due to the control of content, ownership changes are classified as major if the original owners no longer retain more than 50% of the ownership. Part 22 uses the far less precise "substantial change in beneficial ownership or control." It is unclear, moreover, why any change in ownership should require treating a CMRS application as though it were newly filed and subjecting it to new competing applications. Anyone who wanted to file for the channel would have had an opportunity to do so in response to the initial notice.

E. Conditional and Special Temporary Authority (¶¶ 135-138)

The Commission proposes to apply the same pre-grant construction and operation rules to Part 22 and Part 90 CMRS applicants. The Commission seeks comment on whether the current Part 22 rules should be adopted for all CMRS applicants or whether all CMRS licensees should be permitted to construct at will, provided that they comply with relevant environmental and aviation hazard rules. 55/

Rules governing the timing of construction and operation bear directly on how quickly an applicant can provide service to the public. The rules governing construction should allow applicants as much flexibility to build and operate as possible, commensurate with the Communications Act. Part 90 rules provide an appropriate model for both 929 and 931 MHz operations, as these have allowed applicants to speed service to the public.

Thus, all 900 MHz applicants should be permitted to undertake conditional construction at any time, provided applicants have complied with the requisite Federal Aviation Administration ("FAA") and environmental restrictions applicable to the service.

With respect to pre-grant operating authority, governed by § 309(f) of the Act, there are several possible approaches to expedite service to the public. The major restriction on operation prior to grant of an application appears to be § 309(f) of the Act, which provides for special temporary authority to

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55/ *Further Notice* at ¶ 137.

operate prior to expiration of the 30-day public notice period required by § 309(b). 56/

One possible alternative is to apply the conditional permit procedures of § 90.159(b) through (h) to all 900 MHz paging applications. This, by rule, grants a conditional authorization to thoes complying with these procedures. So long as operation did not commence until after expiration of the prescribed public notice period required by § 309(b), of the Communications Act, such a procedure would appear consistent with § 309(f). Of course, here a mutually exclusive application was filed, neither party could commence operating. Because § 90.159 permits such operation only when there has been frequency coordination and FAA approval (if needed), the most fundamental Commission concerns would have been addressed. This procedure appears particularly important for the 900 MHz paging systems which typically employ numerous transmitters to serve a market and could expand efficiently to provide needed service.

Alternatively, the Commission could adopt the approach taken by the Microwave Branch in granting Blanket Special Temporary Authority ("BSTA") to common carrier point-to-point microwave applicants may provide a relevant model. BSTAs permit applicants to commence construction and operation prior to obtaining a grant of permanent authority. 57/ BSTAs are granted to a parent company

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56/ *Further Notice* at ¶ 138.

57/ Under PageNet's proposal for frequency coordination, applicants could operate pursuant to this blanket authority, after coordination by NABER.

or controlling entity, for periods of 180 days, and obviate the need for individual STA requests. 58/

The BSTA approach is consistent with the § 309(f) 180-day limitation on STA grants of operating authority and, because the applicant certifies that the grant of BSTA authority is required to "compete effectively and/or to transact [its] business," the BSTA authority complies with the § 309(f) "extraordinary circumstances" requirement.

F. License Term/Renewal Expectancy (¶¶ 139-140)

PageNet supports the Commission's proposal to extend the license term of all CMRS licensees to ten years. Additionally, PageNet supports adoption of a unified renewal expectancy standard to be applied to all CMRS licensees.

G. Assignment of Licenses and Transfer of Control (¶¶ 141-146)

Depending upon the service, certain Commission rules in both Parts 22 and 90 provide for a number of restrictions on the transfer of licensed facilities and/or requirements for a showing that no trafficking is involved in the proposed assignment or transfer of control of a licensee. As a result, various rules forbid the assignment or transfer of unconstructed authorizations.

58/ Consistent with § 309(f) of the Act and Part 22 rules, applicants could seek extensions of a BSTA. The net result would be that each CMRS provider entity would be required, twice a year, to submit a request for continuation of the authority to engage in pre-grant operation. The specific requirements of BTSAs are detailed in a form letter compiled by the Microwave Branch in Gettysburg, Pennsylvania (Reference No. 7140-01).